

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**IN RE: BLUE CROSS BLUE SHIELD
ANTITRUST LITIGATION
(MDL No. 2406)**

Master File No. 2:13-CV-20000-RDP

**This document relates to Provider-
Track cases.**

**EVIDENTIARY SUBMISSION IN SUPPORT OF DEFENDANTS' MOTION
REGARDING THE ANTITRUST STANDARD OF REVIEW APPLICABLE TO
PROVIDER PLAINTIFFS' SECTION 1 CLAIMS PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 56**

Exhibit*	Description	Bates No.	Sealing Status
DX283	Evolution of the Blues – An Emerging Concept (Oct. 1979)	BCBSA00025022	Public
DX284	A History of the Development of the Approval Program (Nov. 1951)	BCBSA00049174	Public
DX285	List of Plans Approved by AHA (Apr. 1938)	BCBSA00070063	Public
DX286	Blue Cross Commission Meeting Minutes (June 1947)	BCBSA00109260	Public
DX287	Policy Letter and Report re: Licensing Agreement (Mar. 1952) (excerpts)	BCBSA00157045	Public
DX288	AMCP Commission Meeting Minutes (Dec. 1947)	BCBSA00194324	Public
DX289	Blue Shield Commission Meeting Minutes (Mar. 1948)	BCBSA00194332	Public
DX290	Draft Letter re: Blue Shield Symbol (Dec. 1947)	BCBSA00259485	Public
DX291	AHA Journal Article (May 1952)	BCBSA00292962	Public

* Defendants' exhibits numbered 1–164 were filed with the prior Standard of Review summary judgment briefing. Defendants' exhibits numbered 165–282 were filed with the Class Certification briefing.

Exhibit*	Description	Bates No.	Sealing Status
DX292	Blue Shield Commission Meeting Minutes (Apr. 1951)	BCBSA01133768	Public
DX293	Hospital Service Corporation of Alabama Meeting Minutes (Feb. 1936)	BCBSAL_0000041070	Public
DX294	Alabama Network Comparison Report (Jan. 2008)	BCBSAL_0000450522	Sealed
DX295	Alabama Network Comparison Report (Jan. 2008)	BCBSAL_0000450528	Sealed
DX296	Alabama Network Comparison Report (Jan. 2010)	BCBSAL_0000581921	Sealed
DX297	Alabama Network Comparison Report (Mar. 2008)	BCBSAL_0000588158	Sealed
DX298	Blue Cross and Blue Shield of Alabama Staff Presentation (1975) (excerpts)	BCBSAL_0000755731	Public
DX299	National Network Comparison Report (Oct. 2011)	BCBSAL_0000748805	Sealed
DX300	National Network Comparison Report (Dec. 2011)	BCBSAL_0000748838	Sealed
DX301	Alabama Trademark Use	BCBSAL_0001078082	Public
DX302	The History of Blue Cross Blue Shield of Alabama from a Medical Director's Perspective (Jan. 2009)	BCBSAL_0002071314	Public
DX303	9/20/2017 30(b)(1) Deposition Transcript of Paula Taffe (Blue Cross Blue Shield Association) (excerpts)	No Bates	Public
DX304	7/11/2017 30(b)(6) Deposition Transcript of Blue Cross and Blue Shield of Alabama through Michael Patterson (excerpts)	No Bates	Public

Exhibit*	Description	Bates No.	Sealing Status
DX305	4/12/2017 30(b)(6) Deposition Transcript of Blue Cross Blue Shield Association through Melissa Rotunno (excerpts)	No Bates	Public
DX306	8/29/2017 30(b)(6) Deposition Transcript of Blue Cross Blue Shield Association through Kari Hedges (excerpts)	No Bates	Public
DX307	9/22/2017 30(b)(6) Deposition Transcript of BlueCross BlueShield of Mississippi through Bryan Lagg (excerpts)	No Bates	Public
DX308	2/15/2017 Deposition Transcript of George Tickle (Cowin Equipment Company) (excerpts)	No Bates	Public
DX309	1/11/2021 Deposition Transcript of H.E. Frech III (excerpts)	No Bates	Public
DX310	5/7/2019 Deposition Transcript of H.E. Frech III (excerpts)	No Bates	Public
DX311	1/10/2021 Deposition Transcript of Deborah Haas-Wilson (excerpts)	No Bates	Public
DX312	7/22/2017 Deposition Transcript of Kevin Murphy (excerpts)	No Bates	Public
DX313	1/7/2021 Deposition Transcript of Daniel Slottje (excerpts)	No Bates	Public
DX314	3/12/2021 Deposition Transcript of Daniel Slottje (excerpts)	No Bates	Public
DX315	10/5/2017 Hearing Transcript (Proctor, J.) (excerpt)	No Bates	Public
DX316	12/2/2020 Expert Rebuttal Report of Providers' Expert H.E. Frech III (excerpts)	No Bates	Public
DX317	Blue Cross and Blue Shield of Alabama Entity Registration Record	No Bates	Public

Exhibit*	Description	Bates No.	Sealing Status
DX318	Ala. Code § 10A-20-6.01 (Acts 1935)	No Bates	Public
DX319	Ala. Code § 10A-20-6.01 (Acts 1945)	No Bates	Public
DX320	Alabama Newspaper Samples	No Bates	Public
DX321	4/27/2021 Blue Cross Blue Shield Association Board Resolution	No Bates	Public

Dated: June 1, 2021

Respectfully submitted,

/s/ Evan R. Chesler

Evan R. Chesler

Christine A. Varney

Karin A. DeMasi

Lauren R. Kennedy

David H. Korn

CRAVATH, SWAINE & MOORE LLP

Worldwide Plaza

825 Eighth Avenue

New York, NY 10019

Tel: (212) 474-1000

Fax: (212) 474-3700

echesler@cravath.com

cvarney@cravath.com

kdemasi@cravath.com

lkennedy@cravath.com

dkorn@cravath.com

*Coordinating Counsel for Defendant
Blue Cross and Blue Shield Association;
Counsel for Defendants Blue Cross and
Blue Shield of Alabama; Blue Cross and
Blue Shield of Florida, Inc.; Blue Cross
and Blue Shield of Massachusetts, Inc.;
BlueCross BlueShield of Tennessee,
Inc.; CareFirst, Inc.; CareFirst of
Maryland, Inc.; Group Hospitalization
and Medical Services, Inc.; CareFirst
BlueChoice, Inc.; Health Care Service
Corporation, an Illinois Mutual Legal
Reserve Company, including its
divisions Blue Cross and Blue Shield of
Illinois, Blue Cross and Blue Shield of
Texas, Blue Cross and Blue Shield of
New Mexico, Blue Cross and Blue
Shield of Oklahoma, and Blue Cross
and Blue Shield of Montana; Caring for
Montanans, Inc., f/k/a Blue Cross and
Blue Shield of Montana, Inc.*

Craig A. Hoover
E. Desmond Hogan
Justin Bernick
Peter Bisio
Elizabeth Jose
HOGAN LOVELLS US LLP
Columbia Square
555 13th Street, N.W.
Washington, DC 20004
Tel: (202) 637-5600
Fax: (202) 637-5910
craig.hoover@hoganlovells.com
desmond.hogan@hoganlovells.com
justin.bernick@hoganlovells.com
peter.bisio@hoganlovells.com
elizabeth.jose@hoganlovells.com

John D. Martin
Lucile H. Cohen
Travis A. Bustamante
NELSON MULLINS RILEY &
SCARBOROUGH LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Tel: (803) 255-9421
Fax: (803) 256-7500
john.martin@nelsonmullins.com
lucie.cohen@nelsonmullins.com
travis.bustamante@nelsonmullins.com

Cavender C. Kimble
BALCH & BINGHAM LLP
1901 6th Avenue North, Suite 1500
Birmingham, AL 35203-4642
Tel: (205) 226-3437
Fax: (205) 488-5860
ckimble@balch.com

Counsel for Anthem, Inc., f/k/a WellPoint, Inc., and all of its named subsidiaries in this consolidated action; Blue Cross and Blue Shield of North Carolina, Inc.; Louisiana Health Service & Indemnity Company (Blue Cross and Blue Shield of Louisiana); BCBSM, Inc. (Blue Cross and Blue Shield of Minnesota); Blue Cross and Blue Shield of

David J. Zott, P.C.
Daniel E. Laytin, P.C.
Sarah J. Donnell
Christa C. Cottrell, P.C.
Zachary Holmstead
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Tel: (312) 862-2000
Fax: (312) 862-2200
david.zott@kirkland.com
daniel.laytin@kirkland.com
sarah.donnell@kirkland.com
christa.cottrell@kirkland.com
zachary.holmstead@kirkland.com

Kimberly R. West (Liaison Counsel)
Mark M. Hogewood
WALLACE, JORDAN, RATLIFF &
BRANDT, LLC
First Commercial Bank Building
800 Shades Creek Parkway, Suite 400
Birmingham, AL 35209
Tel: (205) 870-0555
Fax: (205) 871-7534
kwest@wallacejordan.com
mhogewood@wallacejordan.com

Counsel for Blue Cross Blue Shield Association

James L. Priester
Carl S. Burkhalter
John Thomas A. Malatesta, III
MAYNARD COOPER & GALE PC
1901 6th Avenue North, Suite 2400
Regions Harbert Plaza
Birmingham, AL 35203
Tel: (205) 254-1000
Fax: (205) 254-1999
jpriester@maynardcooper.com
cburkhalter@maynardcooper.com
jmalatesta@maynardcooper.com

Pamela B. Slate

South Carolina; Horizon Healthcare Services, Inc. (Horizon Blue Cross and Blue Shield of New Jersey); Blue Cross & Blue Shield of Rhode Island; Blue Cross and Blue Shield of Vermont; Cambia Health Solutions, Inc.; Regence Blue Shield of Idaho; Regence Blue Cross Blue Shield of Utah; Regence Blue Shield (of Washington); Regence Blue Cross Blue Shield of Oregon

Gwendolyn Payton
KILPATRICK TOWNSEND &
STOCKTON LLP
1420 Fifth Avenue, Suite 3700
Seattle, WA 98101
Tel: (206) 626-7714
Fax: (206) 299-0414
gpayton@kilpatricktownsend.com

J. Bentley Owens, III
ELLIS, HEAD, OWENS & JUSTICE
113 North Main Street
Columbiana, AL 35051-0587
Tel: (205) 669-6783
Fax: (205) 669-4932
bowens@wefhlaw.com

Counsel for Defendants Premera Blue Cross, d/b/a Premera Blue Cross Blue Shield of Alaska

Brian K. Norman
SHAMOUN & NORMAN, LLP
1800 Valley View Lane, Suite 200
Farmers Branch, TX 75234
Tel: (214) 987-1745
Fax: (214) 521-9033
bkn@snlegal.com

H. James Koch
ARMBRECHT JACKSON LLP
RSA Tower, 27th Floor
11 North Water Street
Mobile, AL 36602

HILL CARTER FRANCO COLE &
BLACK, P.C.

425 South Perry Street
Montgomery, AL 36104
Tel: (334) 834-7600
Fax: (334) 386-4381
pslate@hillhillcarter.com

*With Cravath, Swaine & Moore LLP,
counsel for Defendant Blue Cross Blue
Shield of Alabama*

Helen E. Witt, P.C.
Jeffrey J. Zeiger, P.C.
Erica B. Zolner
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Tel: (312) 862-2000
Fax: (312) 862-2200
hwitt@kirkland.com
jzeiger@kirkland.com
ezolner@kirkland.com

Kimberly R. West (Liaison Counsel)
Mark M. Hogewood
WALLACE, JORDAN, RATLIFF &
BRANDT, LLC
First Commercial Bank Building
800 Shades Creek Parkway, Suite 400
Birmingham, AL 35209
Tel: (205) 870-0555
Fax: (205) 871-7534
kwest@wallacejordan.com
mhogewood@wallacejordan.com

*Counsel for Defendants Health Care
Service Corporation, an Illinois Mutual
Legal Reserve Company, including its
divisions Blue Cross and Blue Shield of
Illinois, Blue Cross and Blue Shield of
Texas, Blue Cross and Blue Shield of
New Mexico, Blue Cross and Blue
Shield of Oklahoma, and Blue Cross
and Blue Shield of Montana; Caring for*

Tel: (251) 405-1300
Fax: (251) 432-6843
hjk@ajlaw.com

*Counsel for Defendants CareFirst, Inc.;
CareFirst of Maryland, Inc.; Group
Hospitalization and Medical Services, Inc.;
CareFirst BlueChoice, Inc.*

R. David Kaufman
M. Patrick McDowell
BRUNINI, GRANTHAM, GROWER
& HEWES, PLLC
190 East Capitol Street
The Pinnacle Building, Suite 100
Jackson, MS 39201
Tel: (601) 948-3101
Fax: (601) 960-6902
dkaufman@brunini.com
pmcdowell@brunini.com

John D. Martin
Lucile H. Cohen
Travis A. Bustamante
NELSON MULLINS RILEY &
SCARBOROUGH LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Tel: (803) 255-9421
Fax: (803) 256-7500
john.martin@nelsonmullins.com
lucie.cohen@nelsonmullins.com
travis.bustamante@nelsonmullins.com

Cheri D. Green
BLUE CROSS BLUE SHIELD OF
MISSISSIPPI
P.O. Box 1043
Jackson, MS 39215
Tel: (601) 932-3704
cdgreen@bcbsms.com

*Counsel for Defendant Blue Cross Blue
Shield of Mississippi, a Mutual Insurance
Company*

*Montanans, Inc., f/k/a Blue Cross and
Blue Shield of Montana, Inc.; Highmark
Inc., f/k/a Highmark Health Services;
Highmark West Virginia Inc.; Highmark
Blue Cross Blue Shield Delaware Inc.;
California Physicians' Service d/b/a
Blue Shield of California*

Jonathan M. Redgrave
REDGRAVE, LLP
14555 Avion Parkway, Suite 275
Chantilly, VA 20151
Tel: (703) 592-1155
Fax: (612) 332-8915
jredgrave@redgravellp.com

*Additional Counsel for HCSC and
Highmark Defendants*

Todd Stenerson
SHEARMAN & STERLING LLP
401 9th Street, N.W., Suite 800
Washington, DC 20004
Tel: (202) 508-8000
Fax: (202) 508-8100
todd.stenerson@shearman.com

Sarah L. Cylkowski
Thomas J. Rheaume, Jr.
BODMAN PLC
1901 Saint Antoine Street
6th Floor at Ford Field
Detroit, MI 48226
Tel: (313) 259-7777
Fax: (734) 930-2494
scylkowski@bodmanlaw.com
trheaume@bodmanlaw.com

Andy P. Campbell
A. Todd Campbell
Yawanna N. McDonald
CAMPBELL PARTNERS LLC
505 North 20th Street, Suite 1600
Birmingham, AL 35203

Michael A. Naranjo
FOLEY & LARDNER LLP
555 California Street, Suite 1700
San Francisco, CA 94104
Tel: (415) 984-9847
Fax: (415) 434-4507
mnaranjo@foley.com

Alan D. Rutenberg
Benjamin R. Dryden
FOLEY & LARDNER LLP
3000 K Street, N.W., Suite 600
Washington, DC 20007
Tel: (202) 672-5300
Fax: (202) 672-5399
arutenberg@foley.com
bdryden@foley.com

*Counsel for Defendant US Able Mutual
Insurance Company, d/b/a Arkansas Blue
Cross and Blue Shield*

Robert K. Spotswood
Michael T. Sansbury
Joshua K. Payne
Jess R. Nix
Morgan B. Franz
SPOTSWOOD SANSOM & SANSBURY
LLC
Financial Center
505 20th Street North, Suite 700
Birmingham, AL 35203
Tel: (205) 986-3620
Fax: (205) 986-3639
rks@spotswoodllc.com
msansbury@spotswoodllc.com
jpayne@spotswoodllc.com
jnix@spotswoodllc.com
mfranz@spotswoodllc.com

Counsel for Defendant Capital BlueCross

Tel: (205) 224-0750
Fax: (205) 224-8622
andy@campbellpartnerslaw.com
todd@campbellpartnerslaw.com
yawanna@campbellpartnerslaw.com

*Counsel for Defendant Blue Cross and
Blue Shield of Michigan*

John Briggs
Rachel Adcox
Jeny M. Maier
AXINN, VELTROP & HARKRIDER,
LLP
1901 L Street, N.W.
Washington, DC 20036
Tel: (202) 912-4700
Fax: (202) 912-4701
jbriggs@axinn.com
radcox@axinn.com
jmaier@axinn.com

Stephen A. Rowe
Aaron G. McLeod
ADAMS AND REESE LLP
Regions Harbert Plaza
1901 6th Avenue North, Suite 3000
Birmingham, AL 35203
Tel: (205) 250-5000
Fax: (205) 250-5034
steve.rowe@arlaw.com
aaron.mcleod@arlaw.com

*Counsel for Defendant Independence
Blue Cross*

Kathleen Taylor Sooy
Tracy A. Roman
Sarah Gilbert
Honor Costello
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Tel: (202) 624-2500

Evan R. Chesler
Christine A. Varney
Karin A. DeMasi
Lauren R. Kennedy
David H. Korn
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
Tel: (212) 474-1000
Fax: (212) 474-3700
echesler@cravath.com
cvarney@cravath.com
kdemasi@cravath.com
lkennedy@cravath.com
dkorn@cravath.com

John D. Martin
Lucile H. Cohen
Travis A. Bustamante
NELSON MULLINS RILEY &
SCARBOROUGH LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Tel: (803) 255-9421
Fax: (803) 256-7500
john.martin@nelsonmullins.com
lucie.cohen@nelsonmullins.com
travis.bustamante@nelsonmullins.com

Robert R. Riley, Jr.
RILEY & JACKSON, P.C.
3530 Independence Drive
Birmingham, AL 35209
Tel: (205) 879-5000
Fax: (205) 879-5901
rob@rileyjacksonlaw.com

*Counsel for Defendants Blue Cross and Blue
Shield of Florida, Inc.; Blue Cross and Blue
Shield of Massachusetts, Inc.; BlueCross
BlueShield of Tennessee, Inc.*

Edward S. Bloomberg
John G. Schmidt

Fax: (202) 628-5116
ksooy@crowell.com
troman@crowell.com
sgilbert@crowell.com
hcostello@crowell.com

John M. Johnson
Brian P. Kappel
LIGHTFOOT FRANKLIN & WHITE
LLC
The Clark Building
400 20th Street North
Birmingham, AL 35203
Tel: (205) 581-0700
Fax: (205) 581-0799
jjohnson@lightfootlaw.com
bkappel@lightfootlaw.com

*Counsel for Defendants Blue Cross of
Idaho Health Service, Inc.; Blue Cross
and Blue Shield of Kansas, Inc.; Blue
Cross and Blue Shield of Kansas City;
Blue Cross and Blue Shield of
Nebraska; Blue Cross Blue Shield of
Arizona; Blue Cross Blue Shield of
North Dakota; Blue Cross Blue Shield
of Wyoming; Highmark Western and
Northeastern New York Inc.*

David J. Zott, P.C.
Daniel E. Laytin, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Tel: (312) 862-2000
Fax: (312) 862-2200
david.zott@kirkland.com
daniel.laytin@kirkland.com

John Martin
Lucile H. Cohen
Travis A. Bustamante
NELSON MULLINS RILEY &
SCARBOROUGH LLP
1320 Main Street, 17th Floor

Anna Mercado Clark
PHILLIPS LYTLE LLP
One Canalside
125 Main Street
Buffalo, NY 14203
Tel: (716) 847-8400
Fax: (716) 852-6100
ebloomberg@phillipslytle.com
jschmidt@phillipslytle.com
aclark@phillipslytle.com

Stephen A. Walsh
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL
100 Corporate Parkway
One Lake Level
Birmingham, AL 35242
Tel: (205) 572-4107
Fax: (205) 572-4199
swalsh@wwhgd.com

*Counsel for Defendant, Excellus Health
Plan, Inc., d/b/a Excellus BlueCross
BlueShield, incorrectly sued as Excellus
BlueCross BlueShield of New York*

Columbia, SC 29201
Tel: (803) 255-9421
Fax: (803) 256-7500
john.martin@nelsonmullins.com
lucie.cohen@nelsonmullins.com
travis.bustamante@nelsonmullins.com

*Counsel for Defendants Wellmark of
South Dakota, Inc. (Wellmark Blue
Cross and Blue Shield of South Dakota);
Wellmark, Inc. (Wellmark Blue Cross
and Blue Shield of Iowa); Hawaii
Medical Service Association (Blue
Cross and Blue Shield of Hawaii);
Triple-S Salud, Inc.*

Kimberly R. West (Liaison Counsel)
Mark M. Hogewood
WALLACE, JORDAN, RATLIFF &
BRANDT, LLC
First Commercial Bank Building
800 Shades Creek Parkway, Suite 400
Birmingham, AL 35209
Tel: (205) 870-0555
Fax: (205) 871-7534
kwest@wallacejordan.com
mhogewood@wallacejordan.com

*Counsel for Defendants Wellmark of
South Dakota, Inc. (Wellmark Blue
Cross and Blue Shield of South Dakota);
Wellmark, Inc. (Wellmark Blue Cross
and Blue Shield of Iowa); Hawaii
Medical Service Association (Blue
Cross and Blue Shield of Hawaii)*

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2021, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Evan R. Chesler
Evan R. Chesler